IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

WP(C).No. 20878 of 2003(I)

PETITIONER:

DR. T.V. ANIL KUMAR, ASSISTANT PROFESSOR OF PSYCHIATRY, MEDICAL COLLEGE, THIRUVANANTHAPURAM.

BY ADV.SRI.ELVIN PETER P.J.
SRI.S.RAMESH
SRI.P.N.SANTHOSH
SRI.S.D.ASOKAN
SRI.NAVEEN.T

RESPONDENTS:

1. **STATE OF KERALA REPRESENTED BY THE SECRETARY TO GOVERNMENT, HEALTH & FAMILY WELFARE DEPARTMENT, GOVT. SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE DEPARTMENTAL PROMOTION COMMITTEE (HIGHER) FOR SELECTION TO THE POST OF ASSISTANT PROFESSOR OF PSYCHIATRY, REP. BY ITS CONVENOR, SECRETARY TO GOVERNMENT, HALTH & FAMILY WELFARE DEPARTMENT, GOVT. SECRETARIAT, THIRUVANANTHAPURAM.**

3. **DR. M.T. HARISH, LECTURER IN PSYCHIATRY, MEDICAL COLLEGE, CALICUT.**

BY ADV. SRI.R.RAGHUKUMAR (ALUVA) for R3
BY GOVERNMENT PLEADER SMT. SMITHA SUKUMARAN for R1

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/06/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A.NO.7778/2003 IN WP(C) NO.20878/2003 I

DISMISSED

14/06/2007 **SD/-THOTTATHIL B.RADHAKRISHNAN,**
J U D G E.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF SELECT LIST PUBLISHED AS PER NOTIFICATION, G.O.(P) NO.150/2002/H&FWD DTD. 28TH JUNE, 2002.**

EXT.P2: **COPY OF ORDER G.O.(RT) NO.1782/02/H&FWD DTD. 1/08/2002 ISSUED BY THE GOVT.**

EXT.P3: **COPY OF SELECT LIST PUBLISHED AS PER NOTIFICATION G.O.(P) NO.60/2003/H&FWD DTD. 21ST MARCH, 2003.**

/TRUE COPY/

KSS

THOTTATHIL B. RADHAKRISHNAN, J.

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W.P.(C).No. 20878 of 2003-I

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Dated this the 14th day of June, 2007.

JUDGMENT

Petitioner was included in the select list prepared by the Departmental Promotion Committee as per Ext.P1 on 15-5-2002, for promotion as Assistant Professor. Thereafter, by Ext.P3, on a review DPC, the 3rd respondent was placed above the petitioner by giving credit to his seniority in the category of Lecturers and treating him as entitled to march over the petitioner as also Dr.K.Sushil, by applying Rule 28(b)(i)(10) of the General Rules, on the ground that the 3rd respondent had qualified himself for the post before the occurrence of vacancy in the higher post. This is clearly wrong because, while the impugned Ext.P3 does not state the vacancy on the basis of which such decision is taken, the counter affidavit of the Government clearly shows that the vacancies of Assistant

Professors consequent on the promotions to the category of Associate Professors arose before the 3rd respondent acquired the qualification of post graduation on 9-7-2002, for being considered for promotion as Assistant Professor. Under such circumstances, the rule relied on in Ext.P3 is of no avail in favour of the 3rd respondent. This view is fortified by the judgment in **Shajil v. State of Kerala [2004 (1) KLT 553]** with which I am in complete agreement.

Accordingly, the writ petition succeeds and the same is allowed declaring that the petitioner shall be senior to the 3rd respondent in the category of Assistant Professor and his selection by the DPC and inclusion in Ext.P1 select list will prevail and override the modification of the placement made as per Ext.P3. All consequential benefits on the basis of the aforesaid declaration shall duly follow. No costs.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-